

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

MARLIN HERBST,)	
)	Case No. 5:17-cv-04008-MWB
)	
Plaintiff,)	DECLARATION OF J'NAN C.
)	KIMAK IN SUPPORT OF
v.)	PLAINTIFF'S RESISTANCE TO
)	DEFENDANT GIVAUDAN
BUSH BOAKE ALLEN INC., et al.)	FLAVORS CORPORATION'S
)	MOTION FOR SUMMARY
Defendants.)	JUDGMENT

I, J'Nan C. Kimak, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am one of the attorneys representing Plaintiff Marlin Herbst in this matter and make this declaration on my own personal knowledge and in support of Plaintiff's Resistance to Defendant Givaudan Flavors Corporation's Motion for Summary Judgment.

2. Attached hereto as Exhibit "1" is a true and accurate copy of the March 27, 2008 Order in *Vicki Stillmunkes v. Givaudan Flavors Corporation*, Case No. C04-85-MWB in the United States District Court for the Northern District of Iowa, Cedar Rapids Division.

3. Attached hereto as Exhibit "2" is a true and accurate copy of excerpted pages from the March 19, 2008 Deposition of Greg Hoffman in *Kuiper, et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa.

4. Attached hereto as Exhibit "3" is a true and accurate copy of excerpted pages from the March 3, 1990 Trial Transcript of Greg Hoffman in *Kuiper v. IFF, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa.

5. Attached hereto as Exhibit “4” is a true and accurate copy of March 19, 1993 Material Safety Data Sheets #247027, 247208, 205103, and 220108, bates stamped AmerPC 06815-06830, a portion of which was produced by Givaudan in discovery in this case (AmerPC 06815; 06822-23; 06827; 06830) (*See* Defendant Givaudan’s Response to Plaintiff’s Interrogatory No. 2); and which was also produced by American Popcorn in discovery in *Remmes v. International Flavors & Fragrances, Inc., et al.*, Case No. 5:04-cv-04061-MWB, in the United States District Court Northern District of Iowa, Western Division. In addition, these documents were admitted into evidence as exhibits in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. *See also* 3/19/08 Deposition of Greg Hoffman in *Kuiper*, pp. 61-63; *see also* March 19, 2008 Deposition of Dale Hartshorn in *Kuiper*, pp. 40-42 which can be made available for production upon request.

6. Attached hereto as Exhibit “5” is a true and accurate copy of Labels for Givaudan flavors from 1991; 1993 (Flavor #s 202944, 247027 and 247028), bates stamped TM-APC000000083; TM(HERC)-APC000201; TM(HERC)-APC000021; TM(HERC)-APC000155; TM(HERC)-APC000169; TM(HERC)-APC000184; TM(HERC)-APC000229) produced by Givaudan in discovery in this case (with the exception of TM-APC000000083, which was produced by Givaudan in *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa on 12/15/08). *See* Defendant Givaudan’s Response to Plaintiff’s Interrogatory No. 2, which can be made available for production upon request.

7. Attached hereto as Exhibit “6” a true and accurate copy of excerpted pages from the November 30, 2005 Deposition of Greg Hoffman in *Remmes v. International Flavors &*

Fragrances, Inc., et al., Case No. 5:04-cv-04061-MWB, in the United States District Court Northern District of Iowa, Western Division.

8. Attached hereto as Exhibit “7” is a true and accurate copy of the April 18, 1990 Letter from Fries & Fries to Dale Hartshorn, bates stamped AmerPC 07877-07878, produced by American Popcorn in discovery in *Remmes v. International Flavors & Fragrances, Inc., et al.*, Case No. 5:04-cv-04061-MWB, in the United States District Court Northern District of Iowa, Western Division; and admitted into evidence as a joint exhibit in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. *See also* March 19, 2008 Deposition of Greg Hoffman in *Kuiper*, pp. 70, 77; 79-80, which can be made available for production upon request.

9. Attached hereto as Exhibit “8” is a true and accurate copy of the June 17, 1991 Letter from Fries & Fries to American Popcorn, bates stamped TM-APC000000052, produced by Givaudan in discovery in *Kuiper v. IFF, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa on May 8, 2008.

10. Attached hereto as Exhibit “9” is a true and accurate copy of excerpted pages from the December 1, 2005 Deposition of Dale Hartshorn in *Remmes v. International Flavors & Fragrances, Inc., et al.*, Case No. 5:04-cv-04061-MWB, in the United States District Court Northern District of Iowa, Western Division.

11. Attached hereto as Exhibit “10” is a true and accurate copy of Affidavit of Marlin Herbst in Support of Plaintiff’s Resistance to Defendant Givaudan Flavors Corporation’s Motion for Summary Judgment.

12. Attached hereto as Exhibit “11” is a true and accurate copy of the 1985 FFIDS, bates stamped TM001789-001793, produced by Givaudan in discovery in *Arthur, et al. v.*

International Flavor & Fragrances, Inc., et al., Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton on March 1, 2005 and admitted into evidence as an exhibit in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. See also 4/6/06 Deposition of Nancy Higley in *Arthur, et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. A0307157, in the Court of Common Pleas, Hamilton County, Ohio, pp. 117-118 which can be made available for production upon request.

13. Attached hereto as Exhibit “12” is a true and accurate copy excerpted pages from the April 6, 2006 Deposition of Nancy Higley in *Arthur, et al. v. International Flavor & Fragrances, Inc., et al.*, Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton.

14. Attached hereto as Exhibit “13” is a true and accurate copy of excerpted pages from the June 25, 2008 Deposition of John Hallagan in *Christopher Blood, et al. v. Givaudan Flavors Corporation, et al.*, Case No. 1:07-CV-14, in the United States District Court, Northern District of Iowa, Cedar Rapids Division.

15. Attached hereto as Exhibit “14” is a true and correct copy of April 8, 1999 Letter from Nancy Higley to Dr. Flueckiger, bates stamped GIV002530-2533, produced by Givaudan in discovery in *Arthur, et al. v. International Flavor & Fragrances, Inc., et al.*, Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton in 2005 and admitted into evidence as an exhibit in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. See also 4/6/06 Deposition of Nancy Higley in *Arthur, et al. v. International Flavors &*

Fragrances, Inc., et al., Case No. A0307157, in the Court of Common Pleas, Hamilton County, Ohio, pp. 119-120 which can be made available for production upon request.

16. Attached hereto as Exhibit “15” is a true and accurate copy of excerpted pages from the July 11, 2006 Deposition of Robert P. Burns in *Remmes v. International Flavors & Fragrances, Inc., et al.*, Case No. 5:04-cv-04061 in the United States District Court, Northern District of Iowa, Western Division.

17. Attached hereto as Exhibit “16” is a true and accurate copy of Affidavit of David Bratton in *Beverly Mitchell v. International Flavors & Fragrances, Inc.*, Case No. A0404929 in the Court of Common Pleas, Hamilton County, Ohio.

18. Attached hereto as Exhibit “17” is a true and accurate copy of excerpted pages from the January 12, 2006 Deposition of David Bratton in *Arthur, et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. A0307157, in the Court of Common Pleas, Hamilton County, Ohio.

19. Attached as “Exhibit 18A” is a true and accurate copy of a chart reflecting Givaudan sales to American Popcorn that was produced by Givaudan in discovery in this case.

20. Attached hereto as Exhibit “18” is a true and accurate copy of Givaudan Invoices to American Popcorn, bates stamped AmerPC 06959, 06877, 06872, 06856, 06781, 06784, 06773, 06777 which were produced by American Popcorn in *Remmes v. International Flavors & Fragrances, Inc., et al.*, Case No. 5:04-cv-04061-MWB, in the United States District Court Northern District of Iowa, Western Division in 2005. In addition, bates stamped 06959, 06856, 06781, 06784, 06773, 06777 were admitted into evidence as exhibits in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. See also March 19, 2008 Deposition of Greg Hoffman in *Kuiper*,

pp. 71-72 (authenticating 06959, 06856, 06781, 06784, 06773, 06777) which can be made available for production upon request.

21. Attached hereto as Exhibit “19” is a true and accurate copy of the Final Pretrial Order in *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa, containing a Stipulation of facts re: diacetyl content; and, formulas produced by Givaudan in discovery in *Kuiper* on December 15, 2008 and *Arturo Lopez v. Flavors of North America, et al.*, Case No. 2004-L-007262, in the Circuit Court of Cook County, Illinois on January 23, 2008, bates stamped TM-APC000000092-93 and TM-OLM00016.

22. Attached hereto as Exhibit “20” is a true and accurate copy of November 17, 1992 Letter from Coroner’s Office to Tastemaker, bates stamped TM004265, produced by Givaudan in discovery in *Arthur, et al. v. International Flavor & Fragrances, Inc., et al.*, Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton in 2005 and admitted into evidence as an exhibit in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa.

23. Attached hereto as Exhibit “21” is a true and accurate copy of Handwritten Notes re: 1992 cases, bates stamped TM007296-7300, a portion of which (7297) was produced by Givaudan in discovery in this case and a full version was produced by Givaudan in discovery in *Arthur, et al. v. International Flavor & Fragrances, Inc., et al.*, Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton in 2005. This document was also admitted into evidence as an exhibit in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. *See also* January 5, 2006 Deposition of John Hochstrasser in *Arthur, et al. v. International Flavors &*

Fragrances, Inc., Case No. A0307157, in the Court of Common Pleas, Hamilton County, Ohio, pp. 127-128 which can be made available for production upon request.

24. Attached hereto as Exhibit “22” is a true and accurate copy of February 18, 1993 Memorandum re: Occupational Health Concern, bates stamped TM009443-9446, produced by Givaudan in discovery in *Arthur, et al. v. International Flavor & Fragrances, Inc., et al.*, Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton in 2005 and admitted into evidence as an exhibit in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. *See also* 3/10/06 Deposition of John Hochstrasser in *Arthur, et al. v. International Flavor & Fragrances, Inc., et al.*, Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton, p. 257 which can be made available for production upon request.

25. Attached hereto as Exhibit “23” is a true and accurate copy of Tastemaker Operational Procedures, Date: August 13, 1992, for Natural & Artificial Diacetyl Spray Drying, bates stamped TM006484-6585, which was produced by Givaudan in discovery in this case (See Givaudan’s Response to Plaintiff’s RFP #27); and, admitted into evidence as an exhibit in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. *See also* 3/10/06 Deposition of John Hochstrasser in *Arthur, et al. v. International Flavor & Fragrances, Inc., et al.*, Case No. A0307157 in the Court of Common Pleas, State of Ohio, County of Hamilton, p. 300 which can be made available for production upon request.

26. Attached hereto as Exhibit “24” is a true and accurate copy of the Compilation of Correspondence between American Popcorn and Givaudan and Notes re: American Popcorn’s Visits to Givaudan Plant, bates stamped AmerPC 08061, 08059, 08038, 07959-60, 07939,

10336, 06953, 06949, 06923, 06911 and 06855 which were produced by American Popcorn in *Remmes v. International Flavors & Fragrances, Inc., et al.*, Case No. 5:04-cv-04061-MWB, in the United States District Court Northern District of Iowa, Western Division in 2005 and several of which were admitted into evidence as exhibits in the trial of *Kuiper et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa. *See also* 3/19/08 Deposition of Dale Hartshorn in *Kuiper, et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa, pp. 44-56; *See also* March 19, 2008 Deposition of Greg Hoffman in *Kuiper, et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa, p. 70, which can be made available for production upon request.

27. Attached hereto as Exhibit “25” is a true and accurate copy of excerpted pages from the July 11, 2006 Deposition of Robert Burns in *Remmes v. International Flavors & Fragrances, Inc., et al.*, Case No. 5:04-cv-04061-MWB, in the United States District Court Northern District of Iowa, Western Division.

28. Attached hereto as Exhibit “26” is a true and accurate copy of OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200.

29. Attached hereto as Exhibit “27” is a true and accurate copy of excerpted pages from the December 16, 2008 Deposition of Fred Stults in *Aldrich, et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. A0700451, in the Court of Common Pleas, Hamilton County, Ohio.

30. Attached hereto as Exhibit “28” is a true and accurate copy of the Affidavit of Dr. Charles Pue in Support of Plaintiff’s Resistance to Defendant Givaudan Flavors Corporation’s Motion for Summary Judgment (with accompanying incorporated reports A-C).

31. Attached hereto as Exhibit “29” is a true and correct copy of excerpted pages from the May 31, 2006 Deposition of Dan Larsen in *Arthur, et al. v. International Flavors & Fragrances, Inc.*, Case No. A0307157, in the Court of Common Pleas, Hamilton County, Ohio.

32. Attached hereto as Exhibit “30” is a true and correct copy of Fries & Fries March 6, 1991 Specification Sheet for Natural Butter Flavor WONF (Light) #202944, bates stamped TM-APC0000000084, produced by Givaudan in discovery in *Kuiper, et al. v. International Flavors & Fragrances, Inc., et al.*, Case No. C06-4009-MWB, in the United States District Court of Iowa on December 15, 2008.

VERIFICATION PURSUANT TO 28 U.S.C. §1746

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

s/ J'Nan C. Kimak

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 2018, I electronically filed the foregoing with the Court using the Court's CM/ECF system which sends notification of same to all counsel of record also listed below:

s/ J'Nan C. Kimak

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